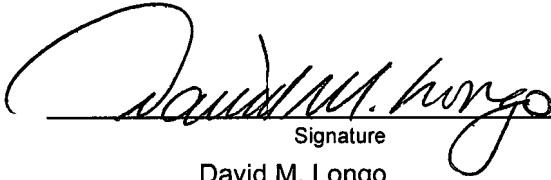


<b>PRE-APPEAL BRIEF REQUEST FOR REVIEW</b>		Docket Number (Optional) <b>09952.0003</b>			
<p>I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]</p> <p>on _____</p> <p>Signature _____</p> <p>Typed or printed name _____</p>		<b>Application Number</b> <b>10/551,419</b>		<b>Filed</b> <b>September 30, 2005</b>	
		<b>First Named Inventor</b> <b>Claudio Borean</b>			
		<b>Art Unit</b> <b>2611</b>		<b>Examiner</b> <b>Aghdam, Freshteh N.</b>	
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p>					
<p>I am the</p> <div style="display: flex; justify-content: space-between;"><div style="width: 45%;"><p><input type="checkbox"/> applicant/inventor.</p><p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p><p><input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>53,235</u></p><p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</p></div><div style="width: 50%; text-align: center;"> _____ <b>Signature</b> <b>David M. Longo</b> _____ <b>Typed or printed name</b> <b>571-203-2763</b> _____ <b>Telephone number</b> <b>September 13, 2010</b> _____ <b>Date</b></div></div> <p><b>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</b></p>					
<p><input checked="" type="checkbox"/> *Total of <u>1</u> forms are submitted.</p>					

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	)	
	)	
Claudio Borean et al.	)	Group Art Unit: 2611
	)	
Application No. 10/551,419	)	
	)	Examiner: Aghdam, Freshteh N.
Filed: September 30, 2005	)	
	)	
For: METHOD OF OFDM TRANSMISSION	)	Confirmation No. 4050
IN A MILLIMETRE-WAVE WLAND	)	
AND CORRESPONDING SYSTEM	)	

**Mailstop: AF**  
Commissioner for Patents  
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Alexandria, VA 22313-1450

Sir:

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Applicant requests a pre-appeal brief review of the rejection under 35 U.S.C. § 103(a) in the Final Office Action mailed April 14, 2010, the period for response to which having been extended through September 14, 2010 by a Petition for Extension of Time of two months and fee payment filed herewith. This Request is being filed concurrently with a Notice of Appeal and relevant fee payments.

**I. Requirements for Submitting a Pre-Appeal Brief Request for Review**

A pre-appeal brief review of the rejection set forth in the Final Office Action is proper because: (1) the claims have been at least twice rejected; (2) Applicant has concurrently filed a Notice of Appeal (prior to filing an Appeal Brief); and (3) this Pre-Appeal Brief Request for Review is five (5) or less pages in length and sets forth legal or factual deficiencies in the rejections. *See* Official Gazette Notice, July 12, 2005.

## II. The Rejection of Claims 23-25, 27-31, and 33 44 is Legally and Factually Deficient

The Final Office Action repeated the rejection of claims 23-25, 27-31, and 33-44 under 35 U.S.C. § 103(a) as being unpatentable over “the instant application’s disclosed prior art” (“*Prior Art*”). The Final Office Action, however, has not properly resolved the *Graham* factual inquiries, the proper resolution of which is the requirement for establishing a framework for an objective obviousness analysis. *See* M.P.E.P. § 2141(II), citing to *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), as reiterated by the U.S. Supreme Court in *KSR International Co. v. Teleflex Inc.*, 550 U.S. 398, 82 USPQ2d 1385 (2007). In particular, the Final Office Action has not properly determined the scope and content of the prior art, nor has the Final Office Action properly ascertained the differences between the claimed invention and the prior art, at least because the Final Office Action has not properly interpreted the prior art and considered both the invention and the prior art as a whole. *See* M.P.E.P. § 2141(II)(B).

Specifically, *Prior Art* does not disclose or suggest at least the following claim elements recited in claim 23 (claim 28 containing similar recitations):

transmitting, simultaneously, a first set ( $X_1, X_2, \dots X_N$ ) of non-zero first samples pertaining to a first terminal of said plurality by inserting said first samples in the respective position assigned to said first terminal, and a second set ( $X_{N+1}, X_{N+2}, \dots X_{2N}$ ) of non-zero second samples pertaining to a second terminal of said plurality by inserting said second samples in the respective position assigned to said second terminal. (emphases added)

The Final Office Action admitted that *Prior Art* “does not expressly teach” the above claim elements. *See* Final Office Action, p. 5. However, the Final Office Action alleged that “it is obvious and/or a matter of design choice to assign different/distinct (non-overlapping) subspaces in a buffer to different sets of samples belonging to different terminals in order to

transmit the first and second non-zero samples simultaneously.” Final Office Action, p. 5. This allegation is incorrect.

*Prior Art* teaches that “[c]urrent WLAN standards such as IEEE 802.11a and IEEE 802.11b provide for all the stations located in a certain access area being connected by sharing only one channel at a time.” Specification, p. 1, ll. 28-31 (emphases added). In view of this, *Prior Art* does not teach transmitting different sets of samples simultaneously, but rather to “stagger [transmission of data from various local stations] over time by causing transmission from or to each single local station to take place within a given time interval.” Specification, p. 9, l. 31 - p. 10, l. 2 (emphases added). *Prior Art* actually “teaches away” from claim 23, and such a leap to the features of claim 23 would not have been predictable. *See, e.g.*, 75 Fed. Reg. pp. 53645 and 53659 (September 1, 2010), noting that “familiar lines of argument still apply, including teaching away from the claimed invention by the prior art ... [i]ndeed, they may have even taken on added importance in view of the recognition in *KSR*...”

In view of the “teaching-away” of *Prior Art* and the fact that *Prior Art* teaches WLAN standards, a person of ordinary skill in the art would not have been motivated to choose a design that is contrary to the standards taught in *Prior Art*, without having the disclosure of the present application and benefit taught therein. Accordingly, contrary to the allegation in the Final Office Action, the difference between *Prior Art* and the claimed subject matter is not a matter of design choice/requirement. *See* Final Office Action, p. 5.

Moreover, methods consistent with the claims and embodiments may perform separation of signal samples (generated in the frequency domain conversion process) using different allocations into the buffer, and then use physical separation to access and filter different transmitting stations (by selecting the portion of the buffer needed for the communication). Such methods are not covered by either existing WiFi standards or any other prior art. Standards and

solutions like IEEE802.11a, b, and g do not use spatial separation and recombination of samples in a buffer in order to perform channel access. Instead, they merely use CSMA/CA procedure (collision avoidance access).

In a Response to Arguments section, the Examiner cited *Dann v. Johnston*, quoting that the “mere existence of differences between the prior art and an invention does not establish the invention’s nonobviousness.” Final Office Action, p. 3. As explained above, however, there is a substantial gap between *Prior Art* and the claims. This gap is so great that it would not have been obvious to one of ordinary skill in the art to bridge this gap. See M.P.E.P. § 2141(III).

Thus, the Final Office Action has neither properly determined the scope and content of the prior art, nor properly ascertained the differences between the prior art and the claimed invention. Independent claim 23 is not obvious over *Prior Art*, and should therefore be allowable. Independent claim 28, while different in scope, contains similar recitations as independent claim 23, and should also be allowable for the same reason as independent claim 23. In addition, dependent claims 24, 25, 27, 29-31, and 33-44 should be allowable at least by virtue of their respective dependence from independent claim 23 or 28, and because they recite additional features not taught or suggested by *Prior Art*.

### **III. Conclusion:**

In view of the foregoing, Applicant respectfully requests a pre-appeal brief review and withdrawal of the 35 U.S.C. § 103(a) rejection. The rejection of claims 23-25, 27-31, and 33-44 does not meet the requirements of M.P.E.P. § 2141 and 35 U.S.C. § 103(a), and thus, is legally and factually deficient and should be withdrawn.

Finally, Applicant notes that Final Office Action did not indicate whether or not the Examiner accepted the drawing amendments filed on March 12, 2009. See Final Office Action coversheet PTOL-326. Applicant requests that the Examiner consider and enter the drawing

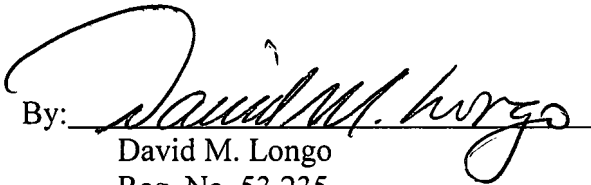
amendments filed on March 12, 2009, and indicate their acceptance in the next communication from the Office responsive to this paper.

Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER, L.L.P.

Dated: September 13, 2010

By:   
David M. Longo  
Reg. No. 53,235

/direct telephone: (571) 203-2763/